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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

In re K.G. et al., Persons Coming Under the
Juvenile Court Law.

MENDOCINO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

N.G.,

Defendant and Appellant.

A143908

(Mendocino County
Super. Ct. Nos. SCUKJVSQ 13-16062-
04, SCUKJVSQ 13-16063-04)

Appellant N.G. (Mother), mother of eight-year-old K.G. and six-year-old J.G.,
appeals from the juvenile court's order terminating her parental rights to K.G. and J.G.¹

¹To obtain context, maintain consistency and economize judicial resources, we take judicial notice of the records and our opinions in the following four prior cases involving this family: (1) A139037, in which we denied Mother's writ petition challenging the juvenile court's order removing K.G. and J.G. from her custody, bypassing reunification services, and setting a permanency hearing under Welfare and Institutions Code, section 366.26 (366.26 hearing) (*N.G. v. Superior Court* (Sept. 30, 2013, A139037) [nonpub. opn.]); (2) A139125, in which we affirmed an order removing a third child, now-four-year-old G.G., from her care (*In re G.G.* (June 30, 2014, A139125) [nonpub. opn.]); (3) A141977, in which we affirmed the issuance of a restraining order protecting the children against their father, J.S. (Father) (*In re G.G.* (Apr. 17, 2015) [nonpub. opn.]); and (4) A144096, in which we denied Mother's writ petition challenging an order denying her reunification services as to G.G. and setting a

She contends the order must be reversed because: (1) there was insufficient evidence supporting the finding that the children were adoptable; and (2) the sibling relationship exception to termination of parental rights applied. We reject the contentions and affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

Prior Proceedings

In August 2010, the Agency filed a dependency petition alleging that then-two-year-old K.G. and then-one-year-old J.G. were at substantial risk of harm because their parents abused alcohol and left them with an inappropriate caretaker. Father was overwhelmed caring for them when Mother left the home for days at a time. The juvenile court ordered services and returned the children to Mother under a family maintenance plan.

In March 2011, the Agency filed a supplemental petition under Welfare and Institutions Code section 387² (a 387 supplemental petition) seeking an out of home placement for the children. The petition, which was sustained, delineated Mother's substance abuse, including her marijuana and methamphetamine use and failure to participate in court-ordered services. The juvenile court ordered reunification services for both parents. In March 2012, the court returned the children to the parents under a family maintenance plan. When Mother tested positive for methamphetamine in June 2012, she was given a strict warning regarding her drug use and an admonishment about the statutory timelines.

366.26 hearing (*N.G. v. Superior Court* (July 15, 2015, A144096 [nonpub. opn.]). (Evid. Code, § 451, subd. (a); *In re Luke L.* (1996) 44 Cal.App.4th 670, 674, fn. 3.) We grant Mendocino County Health and Human Services Agency's (the Agency) request for judicial notice of the records and opinions in cases A139125, 141977 and A144096. Detailed factual and procedural background summaries of the prior proceedings are included in our four prior opinions.

²All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

In April 2013, the juvenile court once again removed K.G. and J.G., as well as their then-six-month-old sibling G.G. from their home. A 387 supplemental petition as to K.G. and J.G. and an original petition as to G.G. alleged the parents were abusing alcohol and had gotten into a domestic altercation during which Mother fought with responding police officers. She had a blood alcohol content of 0.127 percent and was charged with domestic battery and resisting arrest. The court sustained the petitions, stating, “It’s like these parents haven’t figured out, despite all the services and help they have been offered, how to keep their kids safe from the very issues that brought them to the attention of the Court in August 2010, [i.e.,] substance use and getting violent with each other and people around them with their using.”

At disposition, the juvenile court bypassed services and scheduled a 366.26 hearing as to K.G. and J.G. on the ground the parents had already received 12 and 18 months of services as to K.G. and G.G. Mother sought writ review of that order, and we denied the writ on the merits. (*N.G. v. Superior Court* (September 30, 2013, A139037) [nonpub.opn.].) As to G.G., the court found there was a substantial risk of harm to G.G. if returned to Mother’s care. The court nevertheless offered services to Mother as to G.G. because she was progressing at Family Dependency Drug Court (FDDC) and had not received services in relation to G.G. The court bypassed services to Father. Mother appealed from the orders as to G.G., and we affirmed the orders. (*In re G.G.* (June 30, 2014, A139125) [nonpub. opn.].)

Before the 366.26 hearing, both parents filed petitions for modification under section 388 (388 petition), asking the juvenile court to award them additional reunification services. In the alternative, Mother asked the court to return K.G. and J.G. to her with family maintenance services. The court granted the parents a hearing on their 388 petitions.

The Agency recommended termination of parental rights and adoption as the permanent plan for K.G. and J.G. According to a state adoptions assessment report, K.G. and J.G. were living with caretakers with whom they appeared to have substantial emotional ties, and the foster parents wanted to adopt them. The children had lived with

these caretakers from April 2011 to March 2012, and again, since the summer of 2013. When interviewed, the children were not clear about the concept of adoption but were clear they liked where they were and wanted to stay there. They showed their attachment to the caretakers by looking to them for guidance and affection. They called the potential adoptive father “Poppy” and greeted him with open arms when he returned from work.

The report stated the children were likely to be adopted. K.G. was in good physical and mental health, was age appropriate and sweet, and had a pleasant disposition. She was parentified and kept close observation of J.G. and G.G., waiting to eat her meals until the boys ate first. The foster parents were working on K.G. being a little girl rather than acting like a parent, and her behavior was changing. While in the care of her parents from August 2012 to April 2013, K.G. was tardy or absent from school 34 times, which had led to some academic delays. She also had some speech delays for which she was seeing a speech therapist. Her foster parents were working closely with K.G.’s school and had also provided her with a tutor.

J.G. was in good health and was age appropriate. He was attending a head start preschool, which he loved, and his teachers said he was a joy to teach. A mental health assessment revealed he had Disruptive Behavior, Anxiety, Post Traumatic Stress Disorder, and Attention Deficit Hyperactivity Disorder. He was active and bright eyed, outgoing and personable. He sometimes got frustrated with the foster mother when she redirected him, but she believed it was normal behavior that was easy to address.

According to the report, Mother had two children other than K.G., J.G., and G.G., and those two children were not living with Mother. She had a criminal history that included petty theft, battery on a spouse, and obstructing a public officer. Father had a child welfare history regarding two older children from another relationship, and his parental rights to those children had been terminated. His extensive criminal history included driving under the influence, hit and run, battery of former spouse, battery on a person in a school or hospital, disorderly conduct—intoxication of drugs or alcohol, infliction of corporal injury to a spouse, and cruelty to a child with possible injury. K.G. and J.G. were visiting Mother and Father separately for supervised one-hour, monthly

visits. They had begun to ask why there were visits and whether they had to go; they did not ask for their parents between visitation times.

At a combined 388/366.26 hearing, the juvenile court denied Father's 388 petition and granted Mother's 388 petition, finding her circumstances had changed and that it was in the children's best interest to offer her additional services due to her progress on her case plan and the strong bond G.G. shared with K.G. and J.G.

On November 14, 2013, at the Agency's request, the court authorized a trial visit for G.G. with Mother. In G.G.'s six-month review report, the Agency reported that Mother successfully participated in and completed FDDC. She had clean drug tests, obtained housing, participated in the Alternatives to Violence program, and attended therapy. She participated in a psychological evaluation and was diagnosed with marijuana and methamphetamine abuse and antisocial characteristics. The court adopted the Agency's recommendation and returned G.G. to Mother with family maintenance services.

On January 24, 2014, Mother filed a 388 petition requesting overnight visits with K.G. and J.G. The Agency opposed the recommendation after discovering that Mother was allowing the children to have unauthorized visits with Father and had told K.G. to keep this contact a secret. The Agency expressed further concerns when K.G. revealed that Mother had "made [her] lie" to the social worker that her foster parent spanked her and other children in their home. K.G. confirmed her foster parent did not spank her. The Agency was concerned that K.G. "might be coerced into making false statements which can result in a child learning to not trust her own reality, a form of emotional abuse." Mother withdrew her 388 petition.

In an April 10, 2014 addendum report, the Agency reported that Mother was still allowing Father to see the children, against prior orders. The Agency also reported that Father and Mother's boyfriend, J.L. got into a physical altercation at Mother's apartment complex, and that Mother allowed K.G. and J.G. to watch the fight until it was over. K.G. told her therapist that Father and the other man were shouting and physically fighting, and that the other man "pushed my dad to the ground." K.G. said the police

came and that she was scared. K.G.'s therapist was concerned about the children's safety, and said that K.G. "has hinted, and or slipped several times, that she has had contact with her dad throughout their time in custody."

Thereafter, Mother requested a temporary restraining order on behalf of the children against Father, and the juvenile court granted the request. After holding a combined hearing on G.G.'s six-month-review and the request for a restraining order, the court continued family maintenance services for Mother as to G.G. and reunification services as to K.G. and J.G., and issued a restraining order protecting the children against Father. Father challenged the issuance of a restraining order, and we affirmed the order. (*In re G.G.* (Apr. 17, 2015, A141977) [nonpub. opn.])

Current Proceedings

On July 18, 2014, counsel for K.G. and J.G. filed a 388 petition requesting that reunification services be terminated and that a 366.26 hearing be set. The Agency supported the petition, stating that Mother told the social worker she did not think she could parent all three of her children. Mother said she stayed in the home all the time with G.G., was depressed, and wanted to have a life again. She also told a visitation supervisor that she was considering "allowing the children to live with the foster parent as she is exhausted by the length of her case." The juvenile court granted the 388 petition, terminated reunification services, and scheduled a 366.26 hearing for December 31, 2014. The parents did not file a timely writ petition challenging the setting of the 366.26 hearing as to K.G. and J.G.

In a report filed September 16, 2014, the Agency noted that Mother had requested two, two-hour supervised visits with K.G. and J.G. The Agency believed visits should be limited to one, one-hour monthly supervised visit due to several incidents that had occurred. At an August 13, 2014 visit, J.G. said, "Mom hit me," and when Mother made eye contact with J.G., he said the foster mother had hit him. The Agency investigated the incident and found the allegation was unfounded. After K.G. and J.G. had an overnight visit with Mother on August 22, 2014, they displayed increased defiant behaviors at the foster parents' home. K.G. later told the social worker, "My mom told us to be so bad

that we would get hit [by the foster parent] and then we could come home.” The juvenile court adopted the Agency’s recommendation.

The Agency stated in its 366.26 report that Mother was visiting K.G. and J.G. bi-weekly. She consistently arrived on time. She typically discussed case-related topics with the children, including asking them if they would rather live with her than with the potential adoptive parents. After visits with Mother, the children routinely exhibited aggressive behaviors. The children had lived with their potential adoptive family for a total of 29 months over the last three years, and the California Department of Social Services (CDSS) had identified the family as suitable for the children. The Agency believed the children were adoptable, and that they deserved the permanency and stability that adoption would provide.

An adoption assessment dated December 2, 2014, stated the children were likely to be adopted. K.G. was in good health and developmentally on track. Her parentified behaviors had significantly improved. She was repeating the first grade due to difficulty in reading, but excelled in math. She was progressing in her speech therapy. She was attending therapy sessions regularly and appeared to be mentally and physically healthy. J.G. was in good health and was developmentally on track. He played on team sports and got along with the other children in the foster home, including his brother G.G., who had been placed back in the same foster home on November 7, 2014. He was enjoying Kindergarten and had been moved to a more advanced class. He was attending therapy sessions regularly.

At the 366.26 hearing, Mother objected to termination of parental rights and requested guardianship on the ground that the beneficial parent-child and sibling relationship exceptions to adoption applied. The juvenile court found by clear and convincing evidence the children were likely to be adopted. The court found there was an affectionate and good relationship between Mother and the children, as well as a sibling relationship. However, it found those relationships did not outweigh the presumption in favor of adoption, as permanency was in the children’s best interests.

DISCUSSION

1. Adoptability

The juvenile court may terminate parental rights only if it determines by clear and convincing evidence the child is likely to be adopted. (§ 366.26, subd. (c)(1).) The statute requires clear and convincing evidence of the likelihood that adoption will be realized within a reasonable time. (*In re Zeth S.* (2003) 31 Cal.4th 396, 406.) In determining adoptability, the focus is on whether a child's age, physical condition and emotional state will create difficulty in locating a family willing to adopt. (*In re David H.* (1995) 33 Cal.App.4th 368, 378.) "[T]he fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family.*" (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649–1650.)

We review the juvenile court's finding of adoptability for substantial evidence, viewing the evidence in the light most favorable to the judgment, drawing every reasonable inference and resolving all conflicts in the evidence in favor of the juvenile court's findings. (*In re Josue G.* (2003) 106 Cal.App.4th 725, 732.) An appellant challenging an adoptability finding bears the burden of showing the evidence is insufficient to support the juvenile court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.) We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence, or weigh the evidence. (See *In re B.D.* (2008) 159 Cal.App.4th 1218, 1232.)

Here, assuming, without deciding, that Mother did not forfeit the issue by failing to raise it below, we conclude that the adoptions assessment reports for K.G. and J.G. provided ample support for the juvenile court's finding that the children were adoptable. At the time of the 366.26 hearing, they were living in a prospective adoptive home that was ready to accept them as a sibling set, and which CDSS had determined was a suitable

home for the children. K.G. was a sweet girl with a pleasant disposition. Mother points to a September 2013 report that described K.G. as being “clingy with her younger brother” and being parentified, and also described her as having regressed in toileting and speech. However, according to the December 2014 366.26 report, K.G.’s parentified behaviors had significantly improved, and she was attending therapy regularly. Moreover, despite some academic challenges, she was receiving the help she needed—including speech therapy and repeating the first grade—to improve in school.

Mother also points out that J.G. was diagnosed with Disruptive Behavior, Anxiety, Post Traumatic Stress Disorder, and Attention Deficit Hyperactivity Disorder in February 2013. However, during his time in the prospective adoptive home, he “calmed” significantly, was developmentally on track, and was attending therapy sessions regularly. He was outgoing and personable, got along with his peers, and enjoyed playing sports. He was doing well in Kindergarten and had been moved to an advanced class.

Mother asserts there was insufficient evidence of adoptability because there was no evidence that there were other identified, approved families interested in adopting the children. She states that the “availability of other families was critical in this case given the advanced age of the caregivers [71 and 59 years old], the number of young children in the household [three other children] and the incomplete investigation into the family.” To be considered adoptable, however, a child does not have to have a certain number of prospective adoptive parents “‘waiting in the wings.’” (*In re Sarah M.*, *supra*, 22 Cal.App.4th at p. 1649.) There is also no requirement that an adoptive home study be completed before a court can terminate parental rights. (*In re Marina S.* (2005) 132 Cal.App.4th 158, 166.) Here, the children’s ages and absence of any medical ailments or serious developmental challenges made them good candidates for adoption. (See *In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1562 [a child’s young age, good physical and emotional health, intellectual growth and ability to develop interpersonal relationships are all attributes indicating adoptability].) There was substantial evidence to support the juvenile court’s finding.

2. Sibling Relationship Exception

“Adoption, where possible, is the permanent plan preferred by the Legislature.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) After a minor is found to be adoptable, “the court must order adoption and its necessary consequence, termination of parental rights, unless one of the specified circumstances provides a compelling reason for finding that termination of parental rights would be detrimental to the child. The specified statutory circumstances—actually, *exceptions* to the general rule that the court must choose adoption where possible—‘must be considered in view of the legislative preference for adoption when reunification efforts have failed.’ [Citation.] At this stage of the dependency proceedings, ‘it becomes inimical to the interests of the minor to heavily burden efforts to place the child in a permanent alternative home.’ [Citation.] The statutory exceptions merely permit the court, in *exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption.” (*In re Celine R.* (2003) 31 Cal.4th 45, 53.)

One statutory exception to the general legislative preference for adoption occurs when it would be detrimental to the child to terminate parental rights because: “[t]here would be substantial interference with a child’s sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.” (§ 366.26, subd. (c)(1)(B)(v).) The application of this exception “will be rare, particularly when the proceedings concern young children whose needs for a competent, caring and stable parent are paramount.” (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1014.) As such, the party opposing adoption has a “heavy burden” in showing the sibling relationship exception applies. (*In re Daniel H.* (2002) 99 Cal.App.4th 804, 813.) “Many siblings have a relationship with each other, but would not suffer detriment if that relationship ended. If the relationship is not sufficiently significant to cause detriment on

termination, there is no substantial interference with that relationship.” (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952, fn. omitted.)

Moreover, “even if a sibling relationship exists that is so strong that its severance would cause the child detriment, the court then weighs the benefit to the child of continuing the sibling relationship against the benefit to the child adoption would provide.” (*In re L.Y.L., supra*, 101 Cal.App.4th at pp. 952–953.) Here, even assuming J.G. and K.G. shared a sufficiently strong sibling relationship with G.G., the record supports the juvenile court’s finding that adoption was still in the children’s best interests. K.G. and J.G. had been in the system for almost five years and had been exposed to multiple incidences of substance abuse and domestic violence while in their parents’ care. Despite receiving many years of services, Mother continuously showed she was unable to consistently implement safe parenting practices and make decisions that were in the children’s best interests. In contrast, they were thriving in their prospective adoptive parents’ home and were forming secure, healthy attachments with the prospective adoptive parents. The bond K.G. and J.G. shared with G.G. did not outweigh the crucial benefits to their health, development, and security that they would gain by the stability and permanency of adoption.

DISPOSITION

The order terminating parental rights is affirmed.

Jenkins, J.

We concur:

Pollak, Acting P.J.

Siggins, J.